IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 10TH OCTOBER 2006 / 18TH ASWINA 1928

RP.No. 750 of 2006(R)

AGAINST THE JUDGEMENT IN WPC.16956/2006 Dated 17/07/2006

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REVIEW PETITIONER/NOT A PARTY IN THE WRIT PETITION:

RENJITH. V., VATHAMKOLLY HOUSE,
P.O.MANNAMPATTA, KADAMBAZHIPURAM,
PALAKKAD.

BY ADV. SRI.K.V.GOPINATHAN NAIR

RESPONDENTS/PETITIONER & RESPONDENT:

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1. C.K.BALAKRISHNAN, CHEMPAPADATH HOUSE,
   POST KADAMPAZHIPURAM, PALAKKAD.

2. THE SECRETARY,
   REGIONAL TRANSPORT AUTHORITY, PALAKKAD.

R1 BY ADV. SRI.G.PRABHAKARAN
R2 BY GOVT.PLEADER SMT.LAKSHMI RANI.

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 10/10/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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R.P.No.750 OF 2006

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Dated this the 10th day of October, 2006.

O R D E R

This review petition arises from WP(C).No.16956 of 2006.

2. The writ petitioner is the permit holder of Stage Carriage KL-09/R-1819 authorised to operate on an intra-district route Muriankannikadavu-Palakkad. Alleging that Ext.P1 request made by him on 22-5-2006 and the requests of Karimpuzha and Thachanattukara Grama Panchayats made as per Ext.P2 and P3 have not been considered by the competent authority, the writ petition was filed seeking a direction for disposal of the said requests. After service of notice, on 17-7-2006, the writ petition was disposed of by the judgment sought to be reviewed, directing consideration and disposal of Ext.P1 application.

3. This review petition is filed by yet another operator contending that pursuant to Exts.P2 and P3, a

timing conference was convened and timings settled by proceedings evidenced by Annexure-A3, produced along with the review petition. It is pointed out that Annexure-A3 was settlement of timings issued even before the writ petition was filed and order obtained.

4. The writ petitioner filed an affidavit in the review petition taking the stand that he had not appeared in connection with the proceedings evidenced by Annexure-A3 and that he had no notice of the said proceedings.

5. Having regard to the aforesaid stand taken by the writ petitioner, the second respondent Secretary, RTA was directed to produce the files. He has produced the files and I have perused the same.

6. The files disclosed that on 13-7-2006, i.e., even before the writ petition was disposed of, the Secretary, RTA had addressed the Advocate General regarding the facts of the case. May be that the said communication was not available when the writ petition was disposed of. The said communication contains a definite stand of the second respondent that Ext.P1, though dated 22-5-2006, was submitted only on 24-6-2006 along the request of the

Karimpuzha Grama Panchayat, namely, Ext.P2. It is further stated therein that the timings in respect of the vehicle is revised on 3-6-2006 in the presence of the operators on the route, including the writ petitioner. This, in fact, is the first statement of the Secretary, RTA, the second respondent herein as regards the facts of the case. Normally, I would not have referred to a communication between a client and a counsel but this communication between a Government Officer and the Office of the Advocate General is being referred to, to ascertain the true state of facts and the stand taken by the second respondent at the earliest possible point of time.

7. In view of the above, all that will have to be ascertained is whether an order was in fact passed, following the timing conference stated to have been held on 3-6-2006. The files show that on 3-6-2006, a timing conference was held in relation to the permit in question and 17 persons were present. The said timing conference is followed by Annexure-A3 decision, which, on the bottom of it, engrosses that it is to be communicated to the permit holder.

8. In the aforesaid circumstances, the plea of the

writ petitioner that the timing conference stated to be held on 3-6-2006 was held without notice to him, gains importance. The files produced do not disclose any notice having been issued to the writ petitioner. It is stated by the learned Government Pleader that general notice was issued by affixture on the notice board of the Office of the Secretary, RTA. The sufficiency or otherwise of such a notice and the question whether the writ petitioner was entitled to an individual notice, since it was his timings that are being interfered with, are not matters into which I do not proceed, for disposing of this review petition.

9. The judgment sought to be reviewed contained only a direction simpliciter to take up a statutory petition pending before a statutory authority and consider and dispose it off in accordance with law. There is no direction either to modify the timings or to take any particular decision. Under such circumstances, when a decision has been taken following the judgment sought to be reviewed, even if it were bad on grounds of natural justice or on other grounds, it is open to any person to move the statutory authority challenging the said order. A rival operator, though may not have a right to challenge a grant as such, timings can very well be challenged before the

statutory authority, namely, the STAT on proper grounds. If the review petitioner has a grievance regarding the settlement of timings, made as per the order of the Secretary, RTA that followed the judgment sought to be reviewed and if he wishes to make out a case in terms of the law before the STAT, he will have an efficacious remedy under the statute itself. This is all the more so because, while among the 17 who have engrossed signatures in the file as regards the timing conference stated to have been held on 3-6-2006 the name of one Balakrishnan (the writ petitioner's name is also Balakrishnan) is also included, it is not appropriate to conclude in writ jurisdiction, whether he was notified and heard when there is a dispute raised on such an issue. The finality of the earlier proceedings, namely, Annexure-A3, is also a matter which can be considered by the STAT while adjudicating any revision by the review petitioner.

10. Having regard to what is stated above, there is no error apparent on the face of the judgment sought to be reviewed. There is also no ground disclosing manifest miscarriage of justice resulting out of the judgment sought to be reviewed. The review petition fails and the same is dismissed without prejudice to the right of the review

petitioner, if any, to move the STAT. The files produced by the second respondent Secretary will be returned to the learned Government Pleader.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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